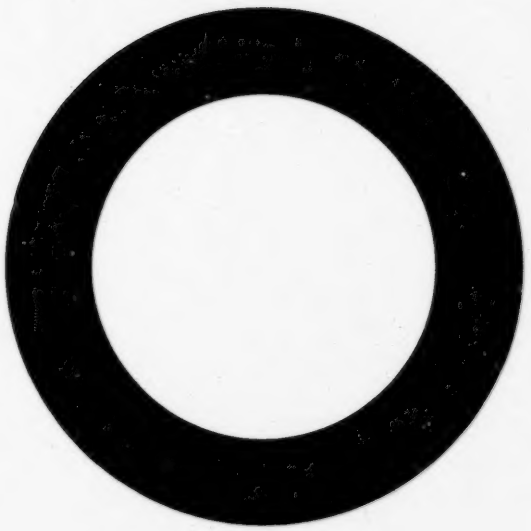

United Nations S/2012/849

Security Council

Distr.: General
16 November 2012

Original: English

Letter dated 16 November 2012 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council

I am pleased to transmit herewith the assessments of the President (see annex I) and of the Prosecutor (see annex II) of the International Residual Mechanism for Criminal Tribunals, pursuant to paragraph 16 of Security Council resolution 1966 (2010).

I would be grateful if you could transmit these assessments to the members of the Security Council.

(*Signed*) Theodor **Meron**
President

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Annex I

Progress report of the President of the International Residual Mechanism for Criminal Tribunals, Judge Theodor Meron (for the period from 1 July to 14 November 2012)

1. The present report is the first submitted pursuant to Security Council resolution 1966 (2010), by which the Council established the International Residual Mechanism for Criminal Tribunals and, in paragraph 16 of the resolution, requested the President and the Prosecutor of the Mechanism to submit reports every six months to the Security Council on the progress of the work of the Mechanism.

I. Introduction

2. On 22 December 2010, the Security Council adopted resolution 1966 (2010), which established the Mechanism to carry out a number of essential functions of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, including the trial of fugitives who are among the most senior leaders suspected of being most responsible for crimes, after the closure of the Tribunals. The Council emphasized that the Mechanism should be a small, temporary and efficient structure. In accordance with its statute (see S/RES/1966 (2010), annex 1), the Mechanism has a single set of principals — a President, Prosecutor and Registrar — who have responsibility over two branches, one located in Arusha, United Republic of Tanzania, and the other in The Hague, the Netherlands.

3. As mandated, the Mechanism commenced operations at its Arusha branch on 1 July 2012. This branch covers functions inherited from the International Criminal Tribunal for Rwanda. (The Hague branch will assume functions derived from the International Tribunal for the Former Yugoslavia on 1 July 2013.)

4. The Arusha branch of the Mechanism is fully functional. It has begun issuing orders and decisions in areas under its competence, including its first Appeals Chamber decision. It has been actively providing witness support and protection functions for those witnesses who have testified in completed cases before the International Criminal Tribunal for Rwanda. The Arusha branch of the Mechanism is also engaged in the monitoring of cases referred by the International Criminal Tribunal for Rwanda to national jurisdictions and has assumed responsibility over issues related to the enforcement of sentences handed down by the Tribunal. It has sought, and will continue to seek, the cooperation of States on a variety of matters, including the critically important issue of the arrest and surrender of the remaining fugitives still wanted for trial by the Tribunal. In addition, it is providing assistance to States in their domestic investigations and prosecutions of individuals charged in relation to the genocide in Rwanda.

II. Establishment of the International Residual Mechanism for Criminal Tribunals

5. Planning and preparations for the establishment of the Mechanism began significantly prior to the commencement date of the operations of the Arusha branch on 1 July 2012 and involved close and extensive collaboration among officials of

the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia and the Mechanism. Preparations became particularly intense after January 2012, as the newly appointed principals of the Mechanism worked closely to ensure that it would be capable of carrying out its functions without any gap in the provision of critical services. The principals also focused on raising awareness of the transition of functions among relevant parties, including witnesses, convicted persons and States Members of the United Nations. Throughout this process, the principals strove to ensure that the Mechanism could maintain and build upon the achievements of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.

A. Organization and principals of the Mechanism

6. Article 4 of the statute of the Mechanism provides that it shall consist of three organs: (a) the Chambers, comprising a Trial Chamber for each branch of the Mechanism and an Appeals Chamber common to both branches of the Mechanism; (b) the Prosecutor, common to both branches of the Mechanism; and (c) the Registry, common to both branches of the Mechanism, to provide administrative services for the Mechanism, including the Chambers and the Prosecutor. Each organ is headed by a full-time or permanent principal, common to both branches.

7. The first President of the Mechanism is Judge Theodor Meron, who is also the President of the International Tribunal for the Former Yugoslavia. President Meron was appointed by the Secretary-General on 29 February 2012.

8. President Meron was selected from among a roster of 25 independent judges, who were elected by the General Assembly on 20 December 2011 from a longer list submitted by the Security Council and following nominations from States Members of the United Nations. In selecting the judges, particular account was taken of candidates' experience as judges of the International Criminal Tribunal for Rwanda or the International Tribunal for the Former Yugoslavia in order to promote efficiency. As of 18 May 2012, all 25 judges on the roster of the Mechanism had been sworn in, and they are capable of assuming their duties when called upon to do so.

9. Pursuant to article 8 of the statute of the Mechanism, the judges will travel to Arusha or to The Hague only when necessary, as requested by the President. Insofar as possible, and as decided by the President, the judges will carry out their functions off site. The judges are not remunerated for being on the roster, but receive compensation only for the days on which they are called to exercise their functions.

10. The roster of judges comprises the following: Judges Carmel A. Agius (Malta); Aydin Sefa Akay (Turkey); Jean-Claude Antonetti (France); Florence Arrey (Cameroon); Solomy Balungi Bossa (Uganda); Ivo Nelson de Caires Batista Rosa (Portugal); José Ricardo de Prada Solaesa (Spain); Ben Emmerson (United Kingdom of Great Britain and Northern Ireland); Christoph Flügge (Germany); Burton Hall (Bahamas); Vagn Prüsse Joensen (Denmark); Gberdao Gustave Kam (Burkina Faso); Liu Daqun (China); Susana Gatti Santana (Uruguay); Joseph E. Chiondo Masanche (United Republic of Tanzania); Theodor Meron (United States of America); Bakone Justice Moloto (South Africa); Lee G. Muthoga (Kenya); Aminatta Lois Runeni N'gum (Gambia); Prisca Matimba Nyambe (Zambia); Alphons Orie (Netherlands); Seon Ki Park (Republic of Korea); Mparany Mamy

Richard Rajohnson (Madagascar); Patrick Lipton Robinson (Jamaica); and William Hussein Sekule (United Republic of Tanzania).

11. On 29 February 2012, the Security Council appointed Mr. Hassan Bubacar Jallow, Prosecutor of the International Criminal Tribunal for Rwanda, to serve as the first Prosecutor of the Mechanism. Pursuant to article 14 of the Statute of the Mechanism, the Prosecutor is responsible for the investigation and prosecution of persons covered by article 1 of the statute, essentially, those persons indicted by the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia as well as individuals who have knowingly and wilfully interfered in the administration of justice or have given false testimony before the Mechanism or the Tribunals.

12. On 19 January 2012, the Secretary-General appointed Mr. John Hocking, Registrar of the International Tribunal for the Former Yugoslavia, to serve as the first Registrar of the Mechanism. Pursuant to article 15 of the statute of the Mechanism, the Registrar is responsible for the administration and servicing of the branches of the Mechanism.

13. In an arrangement that promotes efficiency, and consistent with article 7 of the transitional arrangements approved by the Security Council (see S/RES/1966 (2010), annex 2), President Meron, Prosecutor Jallow and Registrar Hocking are all currently serving in two positions. President Meron is concurrently President of the International Tribunal for the Former Yugoslavia, Prosecutor Jallow is the serving Prosecutor of the International Criminal Tribunal for Rwanda, and Registrar Hocking is Registrar of the International Tribunal for the Former Yugoslavia. Such double-hatting is cost-effective, since each principal only receives one salary.

B. Commencement of the operations of the Arusha branch

14. On 1 July 2012, the Mechanism commenced work at its Arusha branch and assumed certain residual functions from the International Criminal Tribunal for Rwanda. Pursuant to the statute and the transitional arrangements of the Mechanism, those residual functions include: authority to try fugitives wanted for trial by the Tribunal; the authority to hear appeals against decisions handed down by the Tribunal where the notice of appeal was filed after 1 July 2012; authority to conduct reviews of judgements handed down by the Tribunal or to try post-commencement contempt cases; responsibility for the protection of victims and witnesses in completed trials of the Tribunal; supervision of the enforcement of sentences handed down by the Tribunal; decisions on pardon or commutation of sentences; and responding to requests for assistance from national jurisdictions related to the investigation or prosecution of those responsible for serious violations of international humanitarian law in Rwanda. In addition, the Mechanism assumed responsibility for the management of the archives of both Tribunals, and the latter will retain responsibility for the preparation of their records for transfer to the former.

C. Administration and facilities

15. For the current biennium 2012-2013, during which the Mechanism will coexist and be co-located with both the International Tribunal for the Former Yugoslavia

and the International Criminal Tribunal for Rwanda, the three institutions are sharing resources and providing mutual support, in particular by double-hatting staff members and using common administrative support services. To ensure that the Mechanism remains a small and efficient institution, and given the staffing levels of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, the Mechanism does not currently have its own administration. All the administrative services required by the Mechanism, such as human resources, finance, budget, procurement, logistics, security and information technology services, are being provided by the International Tribunal for the Former Yugoslavia or the International Criminal Tribunal for Rwanda, under the coordination of the Mechanism Registry. This arrangement will allow economies of scale through means that include reduced requirements for the funding of posts, lower general operating expenses, and reduced costs for infrastructure equipment and administrative services.

16. Pending the construction of new permanent premises for the Arusha branch, the Registrar, with the assistance of the General Services Section of the International Criminal Tribunal for Rwanda, finalized an office plan for the Mechanism within the premises of the Tribunal. The Registrar ensured that the office space was equipped and fully functional by 1 July 2012.

17. On 3 July 2012, the General Assembly adopted resolution 66/240 B on the report of the Secretary-General on the construction of a new facility for the Arusha branch of the Mechanism (A/66/754). As the project moves forward, the Mechanism is working closely with, and benefiting from, the technical expertise and lessons learned in other United Nations construction projects through the Office of Central Support Services of the Secretariat. Under the overall coordination of the Registrar, the Mechanism, the two Tribunals and the Office of Central Support Services have been consulting closely and have developed the basic programmatic requirements for the facility, including space and technical requirements. A conceptual design has also been prepared. The Office of Central Support Services is facilitating coordination with the relevant departments of the Secretariat, including the Department of Safety and Security, the Office of Legal Affairs and the Procurement Division.

18. Cooperation between the Mechanism and the Government of the United Republic of Tanzania has been excellent to date. The Government has offered to provide land and facilities, such as electricity, water and drainage system, at no cost to the Organization. The United Nations is gathering information to decide on the viability of the proposed site for the facility.

D. Adoption of rules and practice directions

19. The Mechanism has established a structure to govern its activities, mindful of the need to develop rules, procedures and policies that harmonize and build upon best practices of both the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.

20. In accordance with article 13 of the statute of the Mechanism, on 8 June 2012, the Judges of the Mechanism adopted the rules of procedure and evidence. The rules govern the Mechanism's trial and appellate proceedings as well as sentencing and early release practices. The rules harmonize and build upon the procedures already

in place at the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia. They were developed by the Tribunals in conjunction with the Office of Legal Affairs and incorporate comments from the Judges, Offices of the Prosecutors, Registries and Associations of Defence Counsel of both Tribunals, as well as from members of the Security Council.

21. In addition, the Mechanism has developed and issued key practice directions and policies.

22. On 26 June 2012, the Registrar, following consultation with the President, approved the "policy for the provision of support and protection services to victims and witnesses". On 5 July 2012, the Mechanism issued three practice directions: "Practice Direction related to appeals" (MICT/4); "Practice Direction on the procedure for designation of the State in which a convicted person is to serve his or her sentence of imprisonment" (MICT/2); and the "Practice Direction on the procedure for the determination of applications for pardon, commutation of sentence and early release of persons convicted by the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia or the Mechanism" (MICT/3). On 13 July 2012, the Registrar, following consultation with the President, approved the "Standard for Preparation and Transfer of Records — Physicai Records". On 14 November 2012, the Registrar, following consultation with the President, issued the "Directive on Assignment of Defence Counsel" (MICT/5) and the "Code of Professional Conduct for Defence Counsel Appearing before the Mechanism" (MICT/6).

23. The Registrar of the Mechanism will shortly issue the "Practice Direction on filings made before the Mechanism for International Criminal Tribunals". A policy on remuneration of Defence Counsel is still under discussion. More policies related to archives are also planned.

E. Recruitment of staff

24. The prompt, fair and transparent recruitment of staff for the small Mechanism has been an administrative priority. Under the coordination of the Registrar of the Mechanism, recruitment has been conducted by cross-Tribunal panel members and members of central review bodies, with appropriate geographical representation and gender balance. The human resources of both Tribunals have shared the burden of this demanding exercise.

25. Of the 60 positions available from 1 July 2012 across both branches of the Mechanism, 83 per cent have either been filled or are now under recruitment. Staff who have been recruited or laterally transferred to the Mechanism include nationals of the following States: Belgium, Democratic Republic of the Congo, France, Italy, Kenya, Mali, the Netherlands, Rwanda, Senegal, Serbia, Switzerland, the United Republic of Tanzania, Uganda, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Zimbabwe. Approximately three quarters of the staff were recruited from the Tribunals.

III. Judicial activities

26. In accordance with articles 1, 23 and 24 of the statute of the Mechanism and articles 1 to 4 of the transitional arrangements, on 1 July 2012, the Mechanism assumed responsibility for a number of judicial matters of the International Criminal Tribunal for Rwanda, including: the trial of fugitives; retrials of indictees ordered by the Appeals Chamber on or after 1 July 2012; the hearing of appeals against decisions of the Tribunal where the notice of appeal was filed after 1 July 2012; the review of judgements for which the application was filed after 1 July 2012; and the trial of contempt of court and false testimony cases for which the indictment was confirmed after 1 July 2012.

27. On 2 July 2012, the President of the Mechanism assigned Judge Vagn Joensen as duty judge at the Arusha branch. The decision maximized efficiency, since Judge Joensen was already resident in Arusha, serving in the capacity as President of the International Criminal Tribunal for Rwanda. The decision also made economic sense, since Judge Joensen is receiving compensation from the Tribunal, and thus does not require any remuneration for additional duties performed for the Mechanism. In his role as duty judge, Judge Joensen has dealt with numerous motions, including motions seeking variations of protective measures for use of materials in other proceedings.

28. On 5 October 2012, the Appeals Chamber of the Mechanism delivered its first decision in a challenge brought against a decision of the Trial Chamber of the International Criminal Tribunal for Rwanda transferring a case for trial in Rwanda pursuant to Rule 11*bis* of the Rules of Procedure and Evidence of the Tribunal. To ensure the most efficient use of resources, the President of the Mechanism presided over the Appeals Chamber. The Appeals Chamber upheld the Tribunal's decision to transfer the case of Phénéas Munyarugarama to Rwanda for trial proceedings, finding that counsel for Mr. Munyarugarama had failed to rebut the presumption that the Rwandan judiciary is impartial. In reaching its decision, the Appeals Chamber stated that the statute and rules of the Mechanism reflect normative continuity with those of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. According to the Appeals Chamber, "[t]hese parallels are not simply a matter of convenience or efficiency but serve to uphold principles of due process and fundamental fairness, which are the cornerstones of international justice".

29. The Appeals Chamber of the Mechanism has a number of confidential filings pending before it. The Mechanism will also have competence over any appeal from final judgement in the International Criminal Tribunal for Rwanda case of *Ngirabatware*, where judgement is due to be rendered at the end of 2012. Consistent with his goal of economizing resources, the President of the Mechanism plans to preside over that appeal and intends to appoint Mechanism judges already based in The Hague to that bench.

IV. Victims and witnesses

30. Pursuant to article 20 of the statute of the Mechanism and article 5 of the transitional arrangements, on 1 July 2012, the Mechanism became responsible for witness support and protection functions in relation to the nearly 3,000 protected

witnesses who have testified in completed cases tried by the International Criminal Tribunal for Rwanda. This transition occurred with no gap in protection for the witnesses. (The Tribunal will remain responsible for the protection of victims and witnesses in cases ongoing before it. Similarly, the Mechanism will assume responsibility for witness protection issues for completed cases before the International Tribunal for the Former Yugoslavia on 1 July 2013, but not for ongoing cases.)

31. The Witness Support and Protection Office has been fully operational since the establishment of the Arusha branch of the Mechanism. This has ensured a smooth transition in the provision of protection and support services to witnesses.

32. The Mechanism is now responsible for the management and safe keeping of confidential witness information, providing security for witnesses, undertaking threat assessments and coordinating responses to security requirements, consistent with judicial protection orders and in close collaboration with domestic authorities. The Mechanism is also providing continuing support services to witnesses, including the provision of medical and psychosocial services to witnesses residing in Rwanda, particularly for psychotrauma and HIV/AIDS patients, many of whom contracted the virus as a result of the genocide.

V. Fugitives and trial readiness

33. On 1 July 2012, in accordance with Security Council resolution 1966 (2010) and the statute of the Mechanism, the responsibility for tracking the remaining fugitives transferred to the Mechanism. The arrest and prosecution of the fugitives is a top priority for the Mechanism, and the President and Prosecutor, with the support of the Registrar, have agreed to work closely on the associated political issues.

34. To date, nine of the accused who were indicted by the International Criminal Tribunal for Rwanda for their participation in the genocide in Rwanda in 1994 remain at large. Currently, the Mechanism will retain jurisdiction over three of those indictees, namely, Augustin Bizimana; Félicien Kabuga; and Protais Mpiranya. (Consistent with article 6 of the statute of the Mechanism, the Prosecutor of the Tribunal requested referrals to Rwanda in the cases of six fugitives: Fulgence Kayishema; Charles Sikubwabo; Ladislas Ntaganzwa; Aloys Ndimbati; Charles Ryandikayo; and Phénéas Munyarugarama.)

35. The Mechanism must, consistent with its commitment to efficiency, be prepared to commence a trial when a fugitive is apprehended. Consequently, the Registrar is ensuring that the necessary facilities and services will be in place and is preparing a roster of qualified potential staff, pursuant to article 15 (4) of the statute of the Mechanism. The Prosecutor is preparing a similar roster of potential staff for his office in accordance with article 14 (5) of the statute.

VI. Cases referred to national jurisdictions

36. The Mechanism, pursuant to article 6 (5) of its statute, is responsible for monitoring cases referred under International Criminal Tribunal for Rwanda Rule 11*bis* to national courts, with the assistance of international and regional organizations and bodies.

37. The cases of *Bucyibaruta* and *Munyeshyaka* were referred to France in November 2007. They remain pending before the French judiciary.

38. The trial in the first case transferred by the Tribunal to Rwanda, *Uwinkindi*, is expected to commence in Kigali in the coming months. The pretrial proceedings have been monitored by trial monitors of the Tribunal, pending the conclusion of negotiations between the Registry of the Tribunal and the African Commission on Human and Peoples' Rights. Monitoring reports are filed in the official case record, and the public reports are available through the website of the Mechanism (http://unmict.org).

39. Pursuant to the statute of the Mechanism, if it is clear that the conditions for referral are no longer being met in a particular case, and, if it is in the interests of justice, a referral order may be revoked, and the case may be tried by the Mechanism.

VII. Enforcement of sentences

40. In accordance with article 25 of the statute of the Mechanism, on 1 July 2012 its President assumed jurisdiction over enforcement issues related to the Mechanism and the International Criminal Tribunal for Rwanda, including the authority to designate enforcement States, to supervise the enforcement of sentences and to decide on requests for pardon or commutation of sentence for convicted persons already serving their sentences.

41. The final persons convicted by the Tribunal are currently serving their sentences in either Mali (19 persons) or Benin (13 persons). The most recent transfer of eight persons from the United Nations Detention Facility in Arusha to the respective States designated for enforcement took place on 1 and 2 July 2012.[1] One final convicted person is currently held at the detention facility.

42. Consistent with a best practice of the Tribunal to conduct regular visits to the prisons in Mali and Benin, the Registrar conducted a mission to these countries in October 2012. His goals were: to assess enforcement of sentences practices on the ground, with special attention to the controls and procedures in place to ensure fiscal accountability; to raise awareness among authorities on the operations of the Mechanism within their territory; to discuss potential amendments to the enforcement of sentencing agreements to include the recommendations of the International Committee of the Red Cross and to meet with convicted persons and prison authorities on pending general and specific issues. Follow-up activities are being implemented by the Registrar, in consultation with the President.

43. The Mechanism has sought advice from the Department of Safety and Security and the Resident Coordinator in Mali on the security situation in Mali and continues to monitor closely the security situation of the Tribunal's convicts in that country.

[1] The transfer was conducted by the Tribunal and was originally planned to be undertaken before the commencement of the Mechanism. Owing to logistical reasons, the operation could only be completed immediately after 1 July 2012, following appropriate consultations and coordination between the Tribunal and the Mechanism.

VIII. Archives and records

44. In accordance with article 27 of its statute, the Mechanism has exclusive responsibility for the preservation and management of the archives of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, as well as for access issues. Both Tribunals are responsible for preparing their records for transfer to the Mechanism. Pursuant to article 27 (2) of the statute of the Mechanism, the archives of the International Criminal Tribunal for Rwanda are to be located in Arusha, and the archives of the International Tribunal for the Former Yugoslavia are to be located in The Hague.

45. The Tribunals' archives include materials concerning: investigations, indictments and court proceedings; work relating to the detention of accused persons, the protection of witnesses and enforcement of sentences; and documents from States, other law enforcement authorities, international and non-governmental organizations and the general public. The material consists of documents, maps, photographs, audiovisual recordings and objects. The Mechanism has been tasked to preserve those materials and to facilitate the widest possible access to them while ensuring the continued protection of confidential information, including information concerning protected witnesses.

46. As part of its preparation to assume the management of those materials, the Mechanism established the Mechanism Archives and Records Section. The Section has developed standards for the preparation and transfer of records of the Tribunals and is reviewing and streamlining the existing policies, procedures and systems for the management and operation of the centres where those records will be kept.

47. At The Hague branch, the Mechanism Archives and Records Section has already assumed responsibility for the central records centre of the International Tribunal for the Former Yugoslavia. (A limited number of staff of the Mechanism are located in The Hague for those purposes.)

48. In Arusha, physical custody of records of the International Criminal Tribunal for Rwanda remains with the Tribunal itself, pending completion of their preparation for transfer and the completion of the establishment of a small interim records centre within the premises shared by the Mechanism and the Tribunal. The Section has thus not yet assumed responsibility for the Tribunal's materials. (Once construction of the permanent premises building is complete, the archives of the Tribunal and of the Arusha branch of the Mechanism will be rehoused in a dedicated storage space at that location.)

49. Access and information security issues regarding the records of the Mechanism and the Tribunals are set out in the Secretary-General's bulletin on "International Criminal Tribunals: information sensitivity, classification, handling and access", which was promulgated on 20 July 2012 (ST/SGB/2012/3).

IX. Cooperation of States

50. Pursuant to article 28 of the statute of the Mechanism, States are required to cooperate with the Mechanism in relation to the investigation and prosecution of persons covered under the statute of the Mechanism, as well as with orders and requests for assistance in relation to Mechanism cases. The Mechanism, like the

International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, is dependent on the cooperation of States.

51. The arrest and surrender of remaining fugitives is a priority of the Mechanism. The Mechanism requires the full cooperation of States in relation to the ongoing fugitive tracking operations being conducted by the Prosecutor and continues the call of the International Criminal Tribunal for Rwanda on relevant States in this respect.

52. The Mechanism has been engaged with the Government of Rwanda on a number of issues, and the Prosecutor and Registrar have made technical visits to Kigali to facilitate cooperation. Rwandan authorities have extended an invitation to the President, and a first official visit is planned for December 2012.

53. Pursuant to the identification by the Security Council in its resolution 1966 (2010) of the seats of the branches of the Mechanism as The Hague and Arusha, the Office of Legal Affairs is negotiating host country agreements with the Governments of the United Republic of Tanzania and the Netherlands. The Mechanism looks forward to the conclusion of those agreements.

X. Assistance to national jurisdictions

54. Since 1 July 2012, the Mechanism has considered, in accordance with article 28 (3) of its statute and its rules, requests made by various national authorities for assistance in relation to national investigations, prosecutions and trials of individuals charged in relation to the genocide in Rwanda. Requests for provision of assistance to national courts include requests for evidence and/or variation or rescission of protective measures for witnesses, as well as requests to question detained persons. Starting on 1 July 2013, the Mechanism will similarly respond to requests for assistance directed to the International Tribunal for the Former Yugoslavia.

XI. Outreach and external relations

55. The principals of the Mechanism have provided briefings regarding the work of the Mechanism to Member States and have engaged in discussions with interested groups on the mandate and priorities of the Mechanism.

56. On 2 July 2012, the Mechanism launched its website. The continuously expanding website explains the mandate of and provides essential information about the Mechanism and features links to the public records databases of the Mechanism and the Tribunals. Information on the website is currently available in the official languages of the Mechanism, English and French. Bosnian-Croatian-Serbian and Kinyarwanda will be added shortly to increase transparency and to make the information more accessible to the communities in the former Yugoslavia and Rwanda.

XII. Conclusion

57. Consistent with Security Council resolution 1966 (2010) and its mandate, the Mechanism became operational on 1 July 2012 with the commencement of operations in the Arusha branch. It was a challenging task. Careful preparation by officials of the Mechanism and the extensive cooperation and assistance received from the Tribunals and other organizations, including the Office of Legal Affairs, ensured a smooth opening and a successful transition of functions. Throughout the process, the Mechanism was mindful of the injunction of the Security Council that it be a small and efficient organization, and it is committed to remaining so.

Annex II

Progress report of the Prosecutor of the International Residual Mechanism for Criminal Tribunals, Justice Hassan Bubacar Jallow (for the period from 1 July to 5 November 2012)

I. Introduction

1. On 22 December 2010, the Security Council adopted resolution 1966 (2010), by which it established the International Residual Mechanism for Criminal Tribunals. In so doing, the Security Council acknowledged the contributions made by the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda to international criminal justice and accountability for serious international crimes and the necessity that all persons indicted by those Tribunals are brought to justice. Thus, the Mechanism is tasked with continuing the jurisdiction, rights and obligations, and essential functions of the Tribunals following the completion of their respective mandates. In this regard, the Council emphasized that the Mechanism should be a small, temporary and efficient structure. The Mechanism comprises two branches. One branch deals with functions inherited from the International Criminal Tribunal for Rwanda and commenced operations in Arusha, the United Republic of Tanzania, on 1 July 2012. The other branch will be located in The Hague and will take on functions derived from the International Tribunal for the Former Yugoslavia on 1 July 2013.

2. On 29 February 2012, by its resolution 2038 (2012), the Security Council appointed the Prosecutor of the International Criminal Tribunal for Rwanda, Justice Hassan Bubacar Jallow, as Prosecutor of the Mechanism, with effect from 1 March 2012, following its earlier decision that the Mechanism's Prosecutor might also hold the office of Prosecutor of the International Criminal Tribunal for Rwanda. This greatly facilitated the preparation and coordination of key activities towards the establishment and commencement of the Office of the Prosecutor of the Mechanism.

3. In this regard, much of the preparatory work, including the recruitment of core staff, acquisition of facilities, negotiations with the Tribunals and host countries, as well as other Member States in respect of witnesses, detainees and cooperation agreements already executed, was started prior to 1 July 2012.

4. Since July 2012, the Office of the Prosecutor of the Mechanism has begun tracking operations, and arrangements are in place for a smooth transition of the remaining functions of the Office with support from the International Criminal Tribunal for Rwanda as necessary.

II. Staffing

5. Coordination and close cooperation with the Tribunals continue to ensure that the Mechanism functions during its early months. Upon formal appointment, the Prosecutor of the Mechanism, as an interim measure, designated 52 professional staff of the Office of the Prosecutor of the Tribunal to double-hat for related activities of the Mechanism under article 14 (3) of its statute. Since 1 July 2012, 7 of the 14 key staff members of the Office of the Prosecutor of the Mechanism have been appointed by the Registrar. They include three investigators, one crime

analyst and two language assistants, all based in Kigali, and one Legal Officer based in Arusha. In addition, the Prosecutor has designated three other staff to formally double-hat for the Office of the Prosecutor of the Mechanism during their respective tenures at the Tribunal. These include a Special Assistant to the Prosecutor, an Investigator and a Document Control Assistant. With ongoing recruitment, the full complement of Professional staff of the Office is expected to be in place by mid-December 2012. The recruitment process is currently being managed for the Office of the Prosecutor of the Mechanism by staff from the Office of the Prosecutor of the Tribunal and the Human Resources Section of the International Tribunal for the Former Yugoslavia. Lateral transfers from the Office of the Prosecutor of the Tribunal to the Office of the Prosecutor of the Mechanism have been managed by the former and processed by the Tribunal's Human Resources and Planning Section.

6. In the meantime, designated staff of the Office of the Prosecutor of the Tribunal will continue to double-hat until the full complement of staff of the Mechanism is in place.

III. Ad hoc functions

A. Tracking and prosecution of remaining fugitives

7. On 1 August 2012, the Prosecutor of the Mechanism received from the Prosecutor of the International Criminal Tribunal for Rwanda the files on three fugitives, Félicien Kabuga, Protais Mpiranya and Augustin Bizimana. The files had earlier been subject to the International Criminal Tribunal for Rwanda Rule 71 *bis* evidence preservation proceedings and further updating to ensure that the cases were trial ready before the Mechanism in the event of an arrest of any of the three fugitives. In the meantime, the Office of the Prosecutor of the Mechanism commenced investigation and tracking operations, which are based in Kigali. Those activities will focus on locating the three fugitives, support the tracking of the six fugitives referred to Rwanda for trial (under article 28) and carry out other related investigation work.

8. Efforts at tracking the remaining fugitives continue, with a focus on the Great Lakes and the southern African region.

9. The work of the joint International Criminal Tribunal for Rwanda-Kenya Police Task Force, reactivated since November 2010, in respect of the tracking of the key fugitive, Félicien Kabuga, remains slow. The main issues still revolve around relevant and credible information of Félicien Kabuga's whereabouts within the country or adequate proof of his alleged departure from Kenya and the investigation and sequestration of his assets in the country. Recent media reports from Kenya continue to suggest that the fugitive is present in the country, and due diligence from Kenya in the discharge of its international obligations pursuant to Security Council resolution 1966 (2010) would facilitate the location, arrest, transfer and trial of this high-level fugitive.

10. With regard to the fugitive Protais Mpiranya, the Prosecutor undertook a mission to Zimbabwe in September 2012 and held high-level discussions with government officials who all assured him of the cooperation of the Government of Zimbabwe, and the joint task force has since resumed its work.

B. Appeal proceedings

11. Owing to staffing constraints within the Mechanism, staff designated from the International Criminal Tribunal for Rwanda Appeals and Legal Advisory Division successfully defended the first appeal before the Mechanism Appeals Chamber, brought in respect of the decision by the Tribunal to transfer the case of Phineas Munyarugarama to Rwanda for trial.

12. Staff of the Appeals and Legal Advisory Division also are preparing for the anticipated Trial Chamber judgement in the case of Augustin Ngirabatware, which is due to be delivered in December 2012. This preparatory work will allow a smooth transition of the anticipated appeals to the staff of the Mechanism.

IV. Continuing functions

A. Assistance to national jurisdictions

13. While the responsibility for the servicing of foreign requests for assistance formally moved to the Mechanism from July 2012, staff of the Office of the Prosecutor of the Tribunal continued to discharge this responsibility on behalf of the Mechanism pending the recruitment by the Office of the Prosecutor of the Mechanism of its own staff by December 2012. The Office of the Prosecutor of the Mechanism responded to 23 requests from 11 different countries since 1 July 2012, in addition to hosting three national delegations in support of ongoing investigations or prosecutions.

B. Preservation and management of archives

14. On 2 July 2012, the Mechanism Prosecutor handed over to the Mechanism Registrar the archives of 27 completed prosecution files. The full archives of the Office of the Prosecutor of the Tribunal are expected to be transferred to the Office of the Prosecutor of the Mechanism upon completion of all appeals and related litigation before the Tribunal. Active records will in due course be transferred to the Mechanism Prosecutor, and materials of the Tribunal no longer in active use will be transferred to the Mechanism archives on an ongoing basis.

C. Monitoring of cases transferred to national jurisdictions

15. The monitoring function for cases transferred by the International Criminal Tribunal for Rwanda to national jurisdictions is also a responsibility of the Mechanism from 1 July 2012. The monitors appointed by the Tribunal Prosecutor to oversee the Munyeshyaka and Bucyibaruta cases, transferred to France in 2009, and the Uwinkindi case, transferred to Rwanda in 2012, now report to the Mechanism Prosecutor.

16. If the Appeals Chamber affirms the referral order in the case of Bernard Munyagishari, the Prosecutor will appoint a monitor for that case as well. In addition, the Prosecutor will appoint monitors in the other cases that have been

transferred to Rwanda (Sikubwabo, Kayishema, Ntaganzwa, Ndimbati, Ryandikayo and Munyarugarama) as and when the fugitives are arrested.

D. Establishment of The Hague branch of the Mechanism

17. With the establishment of The Hague branch of the Mechanism set for 1 July 2013, the Prosecutor has begun arrangements, in consultation with the International Tribunal for the Former Yugoslavia Prosecutor and the Registrar, to prepare for recruitment of appropriate staff of the Office of the Prosecutor, as well as facilities and administrative arrangements, in order to ensure a smooth transition of relevant functions of the Office of the Prosecutor of the Tribunal to the Mechanism on that date.

18. The Prosecutor is also preparing a roster of potential staff for his Office in the event of an arrest in accordance with article 14 (5) of the statute of the Mechanism.

V. Conclusion

19. The initial reporting period has been one of much activity and progress towards the establishment of the Office of the Prosecutor of the Mechanism. The Mechanism started operating on 1 July 2012. Key staff is already in place, and recruitment is expected to be completed by mid-December 2012. In the meantime, the Prosecutor of the Mechanism has taken over responsibility for the tracking and prosecution of three fugitives and the monitoring of cases transferred to national jurisdictions. The transition of foreign assistance and archiving functions is proceeding smoothly with the assistance of the Office of the Prosecutor of the Tribunal. The Prosecutor is grateful for the support of the staff of the Office of the Prosecutor of the Tribunal, who will continue to provide appeals support as required while recruitment continues.

United Nations S/2012/850

Security Council

Distr.: General
19 November 2012

Original: English

Note by the President of the Security Council

At its 6335th meeting, held on 9 June 2010 in connection with the item entitled "Non-proliferation", the Security Council adopted resolution 1929 (2010).

In paragraph 4 of the resolution, the Security Council requested the Director General of the International Atomic Energy Agency to communicate to the Council all his reports on the application of safeguards in the Islamic Republic of Iran.

Accordingly, the President herewith circulates the report of the Director General dated 16 November 2012 (see annex).

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Annex

Letter dated 16 November 2012 from the Director General of the International Atomic Energy Agency addressed to the President of the Security Council

I have the honour to enclose herewith the report requested by the Security Council in its resolution 1929 (2010), which I have submitted today to the Board of Governors of the International Atomic Energy Agency (see enclosure).

I should be grateful if you would bring the present letter and the enclosed report to the attention of all Members of the Security Council.

(*Signed*) Yukiya **Amano**

Enclosure*

Implementation of the NPT Safeguards Agreement and relevant provisions of Security Council resolutions in the Islamic Republic of Iran

Report by the Director General

A. Introduction

1. This report of the Director General to the Board of Governors and, in parallel, to the Security Council, is on the implementation of the NPT Safeguards Agreement[1] and relevant provisions of Security Council resolutions in the Islamic Republic of Iran (Iran).

2. The Security Council has affirmed that the steps required by the Board of Governors in its resolutions[2] are binding on Iran.[3] The relevant provisions of the aforementioned Security Council resolutions[4] were adopted under Chapter VII of the United Nations Charter, and are mandatory, in accordance with the terms of those resolutions.[5]

3. In line with the request of the Board of Governors in resolution GOV/2012/50 (13 September 2012),[6] this document provides a comprehensive report on substantive implementation of that resolution and of resolution GOV/2011/69 (18 November 2011), especially with respect to the possible military dimensions of Iran's nuclear programme. It also addresses developments since the Director General's previous

* Circulated to the Board of Governors of the International Atomic Energy Agency under the symbol GOV/2012/55.

[1] The Agreement between Iran and the Agency for the Application of Safeguards in Connection with the Treaty on the Non Proliferation of Nuclear Weapons (INFCIRC/214), which entered into force on 15 May 1974.

[2] The Board of Governors has adopted 12 resolutions in connection with the implementation of safeguards in Iran: GOV/2003/69 (12 September 2003); GOV/2003/81 (26 November 2003); GOV/2004/21 (13 March 2004); GOV/2004/49 (18 June 2004); GOV/2004/79 (18 September 2004); GOV/2004/90 (29 November 2004); GOV/2005/64 (11 August 2005); GOV/2005/77 (24 September 2005); GOV/2006/14 (4 February 2006); GOV/2009/82 (27 November 2009); GOV/2011/69 (18 November 2011); and GOV/2012/50 (13 September 2012).

[3] In resolution 1929 (2010), the Security Council: affirmed, inter alia, that Iran shall, without further delay, take the steps required by the Board in GOV/2006/14 and GOV/2009/82; reaffirmed Iran's obligation to cooperate fully with the IAEA on all outstanding issues, particularly those which give rise to concerns about the possible military dimensions of the Iranian nuclear programme; decided that Iran shall, without delay, comply fully and without qualification with its Safeguards Agreement, including through the application of modified Code 3.1 of the Subsidiary Arrangements; and called upon Iran to act strictly in accordance with the provisions of its Additional Protocol and to ratify it promptly (paras. 1-6).

[4] The United Nations Security Council has adopted the following resolutions on Iran: 1696 (2006); 1737 (2006); 1747 (2007); 1803 (2008); 1835 (2008); and 1929 (2010).

[5] By virtue of its Relationship Agreement with the United Nations (INFCIRC/11, Part I.A), the Agency is required to cooperate with the Security Council in the exercise of the Council's responsibility for the maintenance or restoration of international peace and security. All Member States of the United Nations agree to accept and carry out the decisions of the Security Council, and in this respect, to take actions which are consistent with their obligations under the United Nations Charter.

[6] GOV/2012/50, para. 6.

report (GOV/2012/37, 30 August 2012), as well as issues of longer standing. It focuses on those areas where Iran has not fully implemented its binding obligations, as the full implementation of these obligations is needed to establish international confidence in the exclusively peaceful nature of Iran's nuclear programme.

B. Clarification of Unresolved Issues

4. As previously reported, in resolution GOV/2011/69, the Board, inter alia, stressed that it was essential for Iran and the Agency to intensify their dialogue aimed at the urgent resolution of all outstanding substantive issues for the purpose of providing clarifications regarding those issues, including access to all relevant information, documentation, sites, material and personnel in Iran. In that resolution, the Board also called on Iran to engage seriously and without preconditions in talks aimed at restoring international confidence in the exclusively peaceful nature of Iran's nuclear programme. In light of this, from January 2012 onwards, Agency and Iranian officials held several rounds of talks in Vienna and Tehran, including during a visit by the Director General to Tehran in May 2012. However, no concrete results were achieved.[7] In particular, there was no agreement on a structured approach to resolving outstanding issues related to possible military dimensions to Iran's nuclear programme and no agreement by Iran to the Agency's request for access to the Parchin site.

5. In resolution GOV/2012/50, the Board, inter alia, stressed that it was essential for Iran to immediately conclude and implement a structured approach, including, as a first step, providing the Agency with the access it had requested to relevant sites.[8] In that resolution, the Board also decided that Iranian cooperation with Agency requests aimed at the resolution of all outstanding issues was essential and urgent in order to restore international confidence in the exclusively peaceful nature of Iran's nuclear programme.[9]

6. In light of resolution GOV/2012/50, and immediately following the September 2012 Board meeting, the Agency took steps to engage Iran in further talks, including at a meeting on 17 September 2012 between the Director General and H.E. Mr. Fereydoun Abbasi, Vice President of Iran and Head of the Atomic Energy Organization of Iran. On 24 October 2012, the Agency wrote to Iran reaffirming the Agency's commitment to dialogue, and suggesting that a senior level meeting be held on 13 and 14 November 2012 aimed at finalising the structured approach document, agreement on which would allow the Agency and Iran to start substantive work on the outstanding issues. In a letter dated 1 November 2012, Iran reaffirmed its commitment to dialogue with the Agency and invited an Agency delegation to Tehran in mid-December 2012 in order to "discuss the modality for the resolution of the allegations, based on principles elaborated in the meeting between H.E. Dr. Jalili, the Secretary of Supreme National Security Council and the Director General on 30 May 2012". It was subsequently agreed that the Agency and Iran would meet in Tehran on 13 December 2012.

[7] GOV/2012/37, para. 8.
[8] GOV/2012/50, para. 4.
[9] GOV/2012/50, para. 4.

C. Facilities Declared under Iran's Safeguards Agreement

7. Under its Safeguards Agreement, Iran has declared to the Agency 16 nuclear facilities and nine locations outside facilities where nuclear material is customarily used (LOFs).[10] Notwithstanding that certain of the activities being undertaken by Iran at some of the facilities are contrary to the relevant resolutions of the Board of Governors and the Security Council, as indicated below, the Agency continues to verify the non-diversion of declared material at these facilities and LOFs.

D. Enrichment Related Activities

8. Contrary to the relevant resolutions of the Board of Governors and the Security Council, Iran has not suspended its enrichment related activities in the declared facilities referred to below. All of these activities are under Agency safeguards, and all of the nuclear material, installed cascades and the feed and withdrawal stations at those facilities are subject to Agency containment and surveillance.[11]

9. Iran has stated that the purpose of enriching UF_6 up to 5% U-235 is the production of fuel for its nuclear facilities[12] and that the purpose of enriching UF_6 up to 20% U-235 is the manufacture of fuel for research reactors.[13]

10. Since Iran began enriching uranium at its declared facilities, it has produced at those facilities approximately:

- 7,611 kg (+735 kg since the Director General's previous report) of UF_6 enriched up to 5% U-235, of which: 5,303 kg is presently in storage; 1,226 kg has been fed into the Pilot Fuel Enrichment Plant (PFEP) and 1,029 kg has been fed into the Fordow Fuel Enrichment Plant (FFEP) for enrichment up to 20% U-235; and 53 kg has been fed into the Uranium Conversion Facility (UCF) for conversion to UO_2;[14] and
- 232.8 kg (+43.4 kg since the Director General's previous report) of UF_6 enriched up to 20% U-235, of which: 134.9 kg is presently in storage; 1.6 kg has been downblended; and 96.3 kg has been fed into the Fuel Plate Fabrication Plant (FPFP) for conversion to U_3O_8.[15]

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[10] All of the LOFs are situated within hospitals.

[11] In line with normal safeguards practice, small amounts of nuclear material (e.g. some waste and samples) may not be subject to containment and surveillance.

[12] As declared in Iran's Design Information Questionnaires (DIQs) for the Fuel Enrichment Plant (FEP) at Natanz.

[13] GOV/2010/10, para. 8; H.E. Mr. Fereydoun Abbasi reportedly made a statement to the effect that Iran plans to build four to five new reactors in the next few years in order to produce radioisotopes and carry out research ("Iran will not stop producing 20% enriched uranium", *Tehran Times*, 12 April 2011). He was also quoted by the Iranian Student's News Agency as saying "To provide fuel for these (new) reactors, we need to continue with the 20 per cent enrichment of uranium" ("Iran to build new nuclear research reactors — report", Reuters, 11 April 2011).

[14] The figures referring to the UF_6 fed into the enrichment and/or conversion processes include UF_6 contained in the cylinders attached to the processes, as well as nuclear material held up in the process and present in waste.

[15] See footnote 14.

D.1. Natanz

11. **Fuel Enrichment Plant:** FEP is a centrifuge enrichment plant for the production of low enriched uranium (LEU) enriched up to 5% U-235, which was first brought into operation in 2007. The plant is divided into Production Hall A and Production Hall B. According to design information submitted by Iran, eight units are planned for Production Hall A, with 18 cascades in each unit and a total of about 25,000 centrifuges. Iran has yet to provide the corresponding design information for Production Hall B.

12. As of 10 November 2012, Iran had fully installed 61 cascades in Production Hall A, 54 of which were declared by Iran as being fed with natural UF_6. Iran had also partially installed one other cascade. Preparatory installation work had been completed for another 28 cascades, and was ongoing in relation to 54 others. All of the centrifuges installed in Production Hall A are IR-1 machines.[16]

13. Between 20 October 2012 and 11 November 2012, the Agency conducted a physical inventory verification (PIV) at FEP and verified that, as of 21 October 2012, 85,644 kg of natural UF_6 had been fed into the cascades since production began in February 2007, and a total of 7,451 kg of UF_6 enriched up to 5% U-235 had been produced. Iran has estimated that, between 22 October 2012 and 9 November 2012, a total of 1,576 kg of natural UF_6 was fed into the cascades and a total of approximately 160 kg of UF_6 enriched up to 5% U-235 was produced, which would result in a total production of 7,611 kg of UF_6 enriched up to 5% U-235 since production began.

14. Based on the results of the analysis of environmental samples taken at FEP since February 2007,[17] and other verification activities, the Agency has concluded that the facility has operated as declared by Iran in the relevant design information questionnaire (DIQ).

15. **Pilot Fuel Enrichment Plant:** PFEP is a research and development (R&D) facility, and a pilot LEU production facility, which was first brought into operation in October 2003. It has a cascade hall that can accommodate six cascades, and is divided between an area designated for the production of LEU enriched up to 20% U-235 (Cascades 1 and 6) and an area designated for R&D (Cascades 2, 3, 4 and 5).

16. As a result of the PIV carried out by the Agency at PFEP between 15 September 2012 and 1 October 2012, the Agency verified, within measurement uncertainties normally associated with such a facility, the inventory as declared by Iran on 15 September 2012.

17. ***Production area:*** As of 6 November 2012, Iran was feeding low enriched UF_6 into two interconnected cascades (Cascades 1 and 6) containing a total of 328 IR-1 centrifuges.

18. The Agency has verified that, as of 15 September 2012, 1,119.6 kg of UF_6 enriched up to 5% U-235 produced at FEP had been fed into the cascades in the production area since production began in February 2010, and that a total of 129.1 kg of UF_6 enriched up to 20% U-235 had been produced. Iran has estimated

[16] As of 10 November 2012, 10 414 centrifuges were installed at FEP (+991 since the Director General's previous report).

[17] Results are available to the Agency for samples taken up to 24 June 2012.

that, between 16 September 2012 and 11 November 2012, a total of 57.4 kg of UF_6 enriched up to 5% U-235 produced at FEP was fed into the cascades in the production area and that approximately 8.2 kg of UF_6 enriched up to 20% U-235 were produced. This would result in a total production of 137.3 kg of UF_6 enriched up to 20% U-235 at PFEP since production began.

19. ***R&D area:*** Since the Director General's previous report, Iran has been intermittently feeding natural UF_6 into IR-2m and IR-4 centrifuges, sometimes into single machines and sometimes into small or larger cascades.[18] Iran has yet to install three new types of centrifuge (IR-5, IR-6 and IR-6s) as it had indicated it intends to do.[19,20]

20. Between 22 August 2012 and 11 November 2012, a total of approximately 198.6 kg of natural UF_6 was fed into centrifuges in the R&D area, but no LEU was withdrawn as the product and the tails were recombined at the end of the process.

21. Based on the results of the analysis of the environmental samples taken at PFEP,[21] and other verification activities, the Agency has concluded that the facility has operated as declared by Iran in the relevant DIQ.

D.2. Fordow

22. **Fordow Fuel Enrichment Plant:** FFEP is, according to the DIQ of 18 January 2012,[22] a centrifuge enrichment plant for the production of UF_6 enriched up to 20% U-235 and the production of UF_6 enriched up to 5% U-235. Additional information from Iran is still needed in connection with this facility, particularly in light of the difference between the original stated purpose of the facility and the purpose for which it is now being used.[23] The facility, which was first brought into operation in 2011, contains 16 cascades, equally divided between Unit 1 and Unit 2, with a total of 2,784 centrifuges. To date, all of the centrifuges installed are IR-1 machines. Iran has yet to inform the Agency which of the cascades are to be used for enrichment up to 5% U-235 and/or for enrichment up to 20% U-235.[24]

23. Since the Director General's previous report, Iran has installed 644 centrifuges at FFEP, thereby completing the installation of centrifuges in all eight cascades in Unit 1, none of which it was feeding with UF_6. Iran had installed all eight cascades in Unit 2, four of which (configured in two sets of two interconnected cascades) it

[18] On 6 November 2012, there were 32 IR-4 centrifuges installed in Cascade 2, 14 IR-2m centrifuges installed in Cascade 3, 144 IR-4 centrifuges installed in Cascade 4, and 162 IR-2m centrifuges installed in Cascade 5.

[19] GOV/2012/9, para. 20.

[20] On 6 November 2012, the Agency observed the presence of two empty casings for IR-6 centrifuges at PFEP. According to Iran, when originally received at PFEP, these centrifuges had been complete, but the rotors had subsequently been removed for testing somewhere other than PFEP.

[21] Results are available to the Agency for samples taken up to 10 June 2012.

[22] To date, Iran has provided the Agency with an initial DIQ and three revised DIQs (GOV/2012/9, para. 24).

[23] GOV/2009/74, paras. 7 and 14.

[24] In a letter to the Agency dated 23 May 2012, Iran stated that the Agency would be notified about the production level of the cascades prior to their operation (GOV/2012/23, para. 25).

was feeding with UF_6 enriched up to 5% U-235[25] and four of which, having been subjected to vacuum testing, were ready for feeding with UF_6.

24. Iran has estimated that, between 14 December 2011, when feeding of the first set of two interconnected cascades began, and 10 November 2012, a total of 693 kg of UF_6 enriched up to 5% U-235 was fed into cascades at FFEP, and that approximately 95.5 kg of UF_6 enriched up to 20% U-235 were produced, 73.7 kg of which has been withdrawn from the process and verified by the Agency.

25. Based on the results of the analysis of environmental samples taken at FFEP,[26,27] and other verification activities, the Agency has concluded that the facility has operated as declared by Iran in its most recent relevant DIQ.

D.3. Other Enrichment Related Activities

26. The Agency is still awaiting a substantive response from Iran to Agency requests for further information in relation to announcements made by Iran concerning the construction of ten new uranium enrichment facilities, the sites for five of which, according to Iran, have been decided.[28] Iran has not provided information, as requested by the Agency, in connection with its announcement on 7 February 2010 that it possessed laser enrichment technology.[29] As a result of Iran's lack of cooperation on those issues, the Agency is unable to verify and report fully on these matters.

E. Reprocessing Activities

27. Pursuant to the relevant resolutions of the Board of Governors and the Security Council, Iran is obliged to suspend its reprocessing activities, including R&D.[30] Iran has stated that it "does not have reprocessing activities".[31] The Agency has continued to monitor the use of hot cells at the Tehran Research Reactor (TRR)[32] and the Molybdenum, Iodine and Xenon Radioisotope Production (MIX) Facility.[33] The Agency carried out an inspection and design information verification (DIV) at TRR on 11 November 2012, and a DIV at the MIX Facility on 12 November 2012. It is only with respect to TRR, the MIX Facility and the other facilities to which the Agency has access that the Agency can confirm that there are no ongoing reprocessing related activities in Iran.

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[25] The number of centrifuges being fed (696) remains unchanged from that reflected in the Director General's previous report (GOV/2012/37, Figure 7).

[26] Results are available to the Agency for samples taken up to 11 June 2012.

[27] GOV/2012/37, para. 26.

[28] "Iran Specifies Location for 10 New Enrichment Sites", Fars News Agency, 16 August 2010.

[29] Cited on the website of the Presidency of the Islamic Republic of Iran, 7 February 2010, at http://www.president.ir/en/?ArtID=20255.

[30] S/RES/1696 (2006), para. 2; S/RES/1737 (2006), para. 2; S/RES/1747 (2007), para. 1; S/RES/1803 (2008), para. 1; S/RES/1835 (2008), para. 4; S/RES/1929 (2010), para. 2.

[31] Letter to the Agency dated 15 February 2008.

[32] TRR is a 5 MW reactor which operates with 20% U-235 enriched fuel and is used for the irradiation of different types of targets and for research and training purposes.

[33] The MIX Facility is a hot cell complex for the separation of radiopharmaceutical isotopes from targets, including uranium, irradiated at TRR. The MIX Facility is not currently processing any uranium targets.

F. Heavy Water Related Projects

28. Contrary to the relevant resolutions of the Board of Governors and the Security Council, Iran has not suspended work on all heavy water related projects, including the ongoing construction of the heavy water moderated research reactor at Arak, the Iran Nuclear Research Reactor (IR-40 Reactor), which is under Agency safeguards.[34]

29. On 10 November 2012, the Agency carried out a DIV at the IR-40 Reactor at Arak and observed that the installation of cooling and moderator circuit piping was continuing. During the DIV, Iran stated that the operation of the IR-40 Reactor was now expected to commence in the first quarter of 2014.[35]

30. Since its visit to the Heavy Water Production Plant (HWPP) on 17 August 2011, the Agency has not been provided with further access to the plant. As a result, the Agency is again relying on satellite imagery to monitor the status of HWPP. Based on recent images, the plant appears to continue to be in operation. To date, Iran has not permitted the Agency to take samples from the heavy water stored at UCF.[36]

G. Uranium Conversion and Fuel Fabrication

31. Although Iran is obliged to suspend all enrichment related activities and heavy water related projects, it is conducting a number of activities at UCF, the Fuel Manufacturing Plant (FMP) and FPFP at Esfahan, as indicated below, which are in contravention of those obligations, notwithstanding that the facilities are under Agency safeguards. Iran has stated that it is conducting these activities in order to make fuel for research reactors.[37]

32. According to the latest information available to the Agency:

- Iran has produced at UCF: 550 tonnes of natural UF_6, 99 tonnes of which has been sent to FEP; and
- Iran has transferred to TRR the following fuel items produced at FMP and FPFP: ten containing uranium enriched up to 20% U-235, four containing uranium enriched to 3.34% U-235 and five containing natural uranium.

33. **Uranium Conversion Facility:** As previously reported, the Agency carried out a PIV at UCF in March 2012. In order to finalise its evaluation of the PIV results, the Agency has requested that Iran provide further information.

34. In the DIQ for UCF dated 13 October 2012, Iran informed the Agency of an increase in its capacity to produce natural UO_2 at UCF from 10 tonnes per year to 14 tonnes per year.

35. The Agency has verified that, as of 5 November 2012, Iran had produced 24 kg of uranium in the form of UO_2 during R&D activities involving the conversion of UF_6 enriched up to 3.34% U-235. Iran subsequently transferred 13.6 kg of uranium

[34] S/RES/1737 (2006), para. 2; S/RES/1747 (2007), para. 1; S/RES/1803 (2008), para. 1; S/RES/1835 (2008), para. 4; S/RES/1929 (2010), para. 2.
[35] GOV/2012/23, para. 32.
[36] GOV/2010/10, paras. 20 and 21.
[37] As declared in Iran's DIQs for FPFP.

in the form of UO_2 to FMP.[38] As of 6 November 2012, Iran had resumed these R&D activities, but had not produced additional uranium in the form of UO_2 from the conversion of UF_6 enriched to 3.34% U-235. As of the same date, Iran, through the conversion of uranium ore concentrate, had produced about 6,231 kg of natural uranium in the form of UO_2, of which the Agency has verified that Iran transferred 3,100 kg to FMP.

36. During a DIV carried out at UCF on 6 November 2012, Iran informed the Agency that, due to the rupture of a storage tank, a large quantity of liquid containing natural uranium scrap material had spilled onto the floor of the facility. Agency inspectors confirmed that the spillage had taken place. The Agency is discussing with Iran the accountancy of the nuclear material that has spilled from the tank.

37. **Fuel Manufacturing Plant:** Between 4 and 6 September 2012, the Agency carried out a PIV at FMP, the results of which it is still evaluating. On 7 November 2012, the Agency carried out a DIV and an inspection at FMP and confirmed that the manufacture of pellets for the IR-40 Reactor using natural UO_2 was ongoing. Iran informed the Agency that it had completed the manufacture of dummy fuel assemblies for the IR-40 Reactor.[39] As of 7 November 2012, Iran had not commenced the manufacture of fuel assemblies containing nuclear material. On the same date, the Agency also verified two prototype fuel rods made of UO_2 enriched to 3.34% U-235 prior to their transfer to TRR.

38. **Fuel Plate Fabrication Plant:** The Agency carried out a PIV at FPFP on 29 September 2012 and verified that, between the start of conversion activities on 17 December 2011 and 26 September 2012, 82.7 kg of UF_6 enriched up to 20% U-235 had been fed into the conversion process and 38 kg of uranium had been produced in the form of U_3O_8 powder[40] and fuel items. Iran has declared that, between 27 September 2012 and 10 November 2012, it did not convert any more of the UF_6 enriched up to 20% U-235 contained in the cylinder attached to the process. On 11 November 2012, the Agency verified a new fuel assembly prior to its transfer to TRR and verified the presence of 46 fuel plates. On 12 November 2012, the Agency and Iran agreed to an updated safeguards approach for FPFP.

H. Possible Military Dimensions

39. Previous reports by the Director General have identified outstanding issues related to possible military dimensions to Iran's nuclear programme and actions required of Iran to resolve these.[41] Since 2002, the Agency has become increasingly concerned about the possible existence in Iran of undisclosed nuclear related activities involving military related organizations, including activities related to the development of a nuclear payload for a missile.

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[38] GOV/2012/23, para. 35.

[39] A dummy assembly is similar to a fuel assembly except that it contains non-nuclear material.

[40] A small quantity of U_3O_8 enriched to 20% U-235 was converted into UO_2 and downblended with natural UO_2 to produce standard pellets at three different levels of enrichment (1.6%, 2.6% and 3.9%).

[41] See, for example: GOV/2011/65, paras. 38-45 and Annex; GOV/2011/29, para. 35; GOV/2011/7, Attachment; GOV/2010/10, paras. 40-45; GOV/2009/55, paras. 18-25; GOV/2008/38, paras. 14-21; GOV/2008/15, paras. 14-25 and Annex; GOV/2008/4, paras. 35-42.

40. The Annex to the Director General's November 2011 report (GOV/2011/65) provided a detailed analysis of the information available to the Agency, indicating that Iran has carried out activities that are relevant to the development of a nuclear explosive device. This information, which comes from a wide variety of independent sources, including from a number of Member States, from the Agency's own efforts and from information provided by Iran itself, is assessed by the Agency to be, overall, credible. The information indicates that, prior to the end of 2003 the activities took place under a structured programme; that some continued after 2003; and that some may still be ongoing. Since November 2011, the Agency has obtained more information which further corroborates the analysis contained in the aforementioned Annex.

41. In resolution 1929 (2010), the Security Council reaffirmed Iran's obligations to take the steps required by the Board of Governors in its resolutions GOV/2006/14 and GOV/2009/82, and to cooperate fully with the Agency on all outstanding issues, particularly those which give rise to concerns about the possible military dimensions to Iran's nuclear programme, including by providing access without delay to all sites, equipment, persons and documents requested by the Agency.[42] In its resolution GOV/2011/69, the Board of Governors, inter alia, expressed its deep and increasing concern about the unresolved issues regarding the Iranian nuclear programme, including those which need to be clarified to exclude the existence of possible military dimensions. As indicated above, in its resolution GOV/2012/50, the Board of Governors decided, inter alia, that Iranian cooperation with Agency requests aimed at the resolution of all outstanding issues was essential and urgent to restore international confidence in the exclusively peaceful nature of Iran's nuclear programme.

42. As indicated in Section B above, since the November 2011 Board, the Agency, through several rounds of formal talks and numerous informal contacts with Iran, has made intensive efforts to seek to resolve all of the outstanding issues related to Iran's nuclear programme, especially with respect to possible military dimensions, but without concrete results. Specifically, the Agency has:

- Sought agreement with Iran on a structured approach to the clarification of all outstanding issues (referred to in paragraph 4 above), focusing on the issues outlined in the Annex to GOV/2011/65. Agreement has yet to be reached;
- Requested that Iran provide the Agency with an initial declaration in connection with the issues identified in Section C of the Annex to GOV/2011/65. Iran's subsequent declaration dismissed the Agency's concerns in relation to these issues, largely on the grounds that Iran considered them to be based on unfounded allegations;
- Identified, as part of the structured approach, thirteen topics, consistent with those identified in the Annex to GOV/2011/65, which need to be addressed;
- Provided Iran with clarification of the nature of the Agency's concerns, and the information available to it, about Parchin and the foreign expert,[43] and presented Iran with initial questions in this regard, to which Iran has not responded; and

[42] S/RES/1929, paras. 2 and 3.

[43] GOV/2011/65, Annex, para. 44.

- Requested on several occasions, from January 2012 onwards, access to the Parchin site. Contrary to Board resolution GOV/2012/50, Iran has still not provided the Agency with access to the site.

43. **Parchin:** As stated in the Annex to the Director General's November 2011 report,[44] information provided to the Agency by Member States indicates that Iran constructed a large explosives containment vessel in which to conduct hydrodynamic experiments;[45] such experiments would be strong indicators of possible nuclear weapon development. The information also indicates that the containment vessel was installed at the Parchin site in 2000. As previously reported, the location at the Parchin site of the vessel was only identified in March 2011, and the Agency notified Iran of that location in January 2012. Iran has stated that "the allegation of nuclear activities in Parchin site is baseless".[46]

44. As previously reported, satellite imagery available to the Agency for the period from February 2005 to January 2012 shows virtually no activity at or near the building housing the containment vessel. Since the Agency's first request for access to this location, however, satellite imagery shows that extensive activities and resultant changes have taken place at this location. Among the most significant developments observed by the Agency at this location since February 2012 are:

- Frequent presence of, and activities involving, equipment, trucks and personnel;
- Run off of large amounts of liquid from the containment building over a prolonged period;
- Removal of external pipework from the containment vessel building;
- Razing and removal of five other buildings or structures and the site perimeter fence;
- Reconfiguration of electrical and water supply infrastructure;
- Shrouding of the containment vessel building and another building; and
- Initial scraping and removal of considerable quantities of earth at the location and its surrounding area, covering over 25 hectares, followed by further removal of earth to a greater depth at the location and the depositing of new earth in its place.

45. In light of the extensive activities that have been, and continue to be, undertaken by Iran at the aforementioned location on the Parchin site, when the Agency gains access to the location, its ability to conduct effective verification will have been seriously undermined. While the Agency continues to assess that it is necessary to have access to this location without further delay, it is essential that Iran also provide without further delay substantive answers to the Agency's detailed questions regarding the Parchin site and the foreign expert, as requested by the Agency in February 2012.[47]

[44] GOV/2011/65, Annex, para. 49.
[45] GOV/2011/65, Annex, para. 47.
[46] GOV/2012/37, para. 43.
[47] GOV/2012/9, para. 8.

I. Design Information

46. Contrary to its Safeguards Agreement and relevant resolutions of the Board of Governors and the Security Council, Iran is not implementing the provisions of the modified Code 3.1 of the Subsidiary Arrangements General Part to Iran's Safeguards Agreement,[48] which provides for the submission to the Agency of design information for new facilities as soon as the decision to construct, or to authorize construction of, a new facility has been taken, whichever is the earlier. The modified Code 3.1 also provides for the submission of fuller design information as the design is developed early in the project definition, preliminary design, construction and commissioning phases. Iran remains the only State with significant nuclear activities in which the Agency is implementing a comprehensive safeguards agreement that is not implementing the provisions of the modified Code 3.1. It is important to note that the absence of such early information reduces the time available for the Agency to plan the necessary safeguards arrangements, especially for new facilities, and reduces the level of confidence in the absence of other nuclear facilities.[49]

47. Contrary to Iran's obligations under the modified Code 3.1, Iran has not provided the Agency with an updated DIQ for the IR-40 Reactor since 2006. The lack of up-to-date information is having an adverse impact on the Agency's ability to effectively verify the design of the facility and to implement an effective safeguards approach.[50]

48. Iran's response to Agency requests that Iran confirm or provide further information regarding its stated intention to construct new nuclear facilities is that it would provide the Agency with the required information in "due time" rather than as required by the modified Code 3.1 of the Subsidiary Arrangements General Part to its Safeguards Agreement.[51]

J. Additional Protocol

49. Contrary to the relevant resolutions of the Board of Governors and the Security Council, Iran is not implementing its Additional Protocol. The Agency will not be in a position to provide credible assurance about the absence of undeclared nuclear material and activities in Iran unless and until Iran provides the necessary cooperation with the Agency, including by implementing its Additional Protocol.[52]

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[48] In accordance with Article 39 of Iran's Safeguards Agreement, agreed Subsidiary Arrangements cannot be changed unilaterally; nor is there a mechanism in the Safeguards Agreement for the suspension of provisions agreed to in the Subsidiary Arrangements. Therefore, as previously explained in the Director General's reports (see, for example, GOV/2007/22, 23 May 2007), the modified Code 3.1, as agreed to by Iran in 2003, remains in force. Iran is further bound by operative paragraph 5 of Security Council resolution 1929 (2010) to "comply fully and without qualification with its IAEA Safeguards Agreement, including through the application of modified Code 3.1".

[49] GOV/2010/10, para. 35.

[50] GOV/2012/37, para. 46.

[51] GOV/2011/29, para. 37; GOV/2012/23, para. 29.

[52] Iran's Additional Protocol was approved by the Board on 21 November 2003 and signed by Iran on 18 December 2003, although it has not been brought into force. Iran provisionally implemented its Additional Protocol between December 2003 and February 2006.

K. Other Matters

50. The Agency and Iran have continued to discuss the discrepancy between the amount of nuclear material declared by the operator and that measured by the Agency in connection with conversion experiments carried out by Iran at the Jabr Ibn Hayan Multipurpose Research Laboratory (JHL) between 1995 and 2002.[53]

51. As previously reported, Iran is now using in the core of TRR a number of fuel assemblies that were produced in Iran and which contain nuclear material that was enriched in Iran up to 3.5% and up to 20% U-235.[54]

52. As indicated in the Director General's previous report,[55] on 29 and 30 July 2012, the Agency conducted an inspection at the Bushehr Nuclear Power Plant (BNPP) while the reactor was operating at 75% of its nominal power. In a letter dated 15 October 2012, Iran informed the Agency that "fuel assemblies will be transferred from the core to spent fuel pond" from 22 to 29 October 2012. On 6 and 7 November 2012, the Agency conducted an inspection at BNPP and verified that the fuel assemblies were in the spent fuel pond.

L. Summary

53. While the Agency continues to verify the non-diversion of declared nuclear material at the nuclear facilities and LOFs declared by Iran under its Safeguards Agreement, as Iran is not providing the necessary cooperation, including by not implementing its Additional Protocol, the Agency is unable to provide credible assurance about the absence of undeclared nuclear material and activities in Iran, and therefore to conclude that all nuclear material in Iran is in peaceful activities.[56]

54. Contrary to the Board resolutions of November 2011 and September 2012, and despite the intensified dialogue between the Agency and Iran since January 2012, no concrete results have been achieved in resolving the outstanding issues, including Iran having not concluded and implemented the structured approach. The Director General is, therefore, unable to report any progress on clarifying the issues relating to possible military dimensions to Iran's nuclear programme.

55. It is a matter of concern that the extensive and significant activities which have taken place since February 2012 at the location within the Parchin site to which the Agency has requested access will have seriously undermined the Agency's ability to undertake effective verification. The Agency reiterates its request that Iran, without further delay, provide both access to that location and substantive answers to the Agency's detailed questions regarding the Parchin site and the foreign expert.

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[53] This material had been under Agency seal since 2003; GOV/2003/75, paras. 20-25 and Annex 1; GOV/2004/34, para. 32, and Annex, paras. 10-12; GOV/2004/60, para. 33, and Annex, paras. 1-7; GOV/2011/65, para. 49.

[54] GOV/2012/37, para. 50.

[55] GOV/2012/37, para. 51.

[56] The Board has confirmed on numerous occasions, since as early as 1992, that paragraph 2 of INFCIRC/153 (Corr.), which corresponds to Article 2 of Iran's Safeguards Agreement, authorizes and requires the Agency to seek to verify both the non diversion of nuclear material from declared activities (i.e. correctness) and the absence of undeclared nuclear activities in the State (i.e. completeness) (see, for example, GOV/OR.864, para. 49).

56. Given the nature and extent of credible information available, the Agency continues to consider it essential for Iran to engage with the Agency without further delay on the substance of the Agency's concerns. In the absence of such engagement, the Agency will not be able to resolve concerns about issues regarding the Iranian nuclear programme, including those which need to be clarified to exclude the existence of possible military dimensions to Iran's nuclear programme.

57. The Director General continues to urge Iran, as required in the binding resolutions of the Board of Governors and mandatory Security Council resolutions, to take steps towards the full implementation of its Safeguards Agreement and its other obligations, and to urge Iran to engage with the Agency to achieve concrete results on all outstanding substantive issues.

58. The Director General will continue to report as appropriate.

United Nations S/2012/851

Security Council

Distr.: General
19 November 2012

Original: English

Identical letters dated 15 November 2012 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General and the President of the Security Council

Upon instructions from my Government, I wish to draw your attention to the risks emanating from the continuation of acts by the United States Navy in the Persian Gulf and the Sea of Oman in violation of international law and regulations.

During the past month, the United States Navy in the Persian Gulf and the Sea of Oman repeatedly violated the air space of the Islamic Republic of Iran and at the same time totally disregarded the international rules governing the safety and security of air navigation, including the Chicago Convention, and thus undermined the air safety in the Iran Flight Information Region in the Persian Gulf by undertaking high-risk air operations. Recent operations carried out by United States planes violating the airspace of the Islamic Republic of Iran include flights that took place over the coastal areas of Bushehr on 7, 13, 15, 20, 22, 23 and 26 October 2012, endangering the safety of air navigation in the Iran Flight Information Region.

The most recent operation was carried out on 1 November 2012 by a United States drone, which disregarded all radio warnings and penetrated into the airspace of the Islamic Republic of Iran.

These illegal and provocative acts are continuing, and the Government of the Islamic Republic of Iran has been repeatedly lodging its strong protest against military operations of the United States, emphasizing the international obligations of that State to respect the principles of international law and calling upon it to respect the sovereignty, independence and territorial integrity of the Islamic Republic of Iran. Since the continuation of these acts would endanger regional and international peace and security as well as the safety of civil aviation, and taking into account the unfortunate record of an attack by the United States Navy against an Iranian passenger plane, the Government of the Islamic Republic of Iran reminds the Secretary-General of his responsibility to maintain international peace and security. I therefore unequivocally request the Secretary-General to use his good offices before the United States Government to warn it against the continuation of acts in violation of international law and of the adverse consequences of any provocative and dangerous acts for which the United States Government would be held responsible.

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I should be grateful if you would have the present letter circulated as a document of the Security Council.

(*Signed*) Mohammad **Khazaee**
Ambassador
Permanent Representative